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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, DC 20554

In the Matter of	)	
	)	CC Docket No. 98-170
Truth-In-Billing and Billing Format	)	

COMMENTS OF ARCH COMMUNICATIONS GROUP, INC.

Arch Communications Group, Inc. ("Arch"),[1] hereby submits comments in response to the *Further Notice of Proposed Rulemaking* in the above-referenced proceeding.[2] As discussed below, the Commercial Mobile Radio Services ("CMRS") industry is highly competitive and there is absolutely no evidence of "slamming," "cramming," or other billing abuses on the part of CMRS providers. Consequently, Arch urges the Commission not to impose billing regulation upon CMRS carriers in the absence of any evidence of a need for such regulation.

I. INTRODUCTION

On May 11, 1999, the Commission released its *First Report and Order and Further Notice of Proposed Rulemaking* in the above-captioned proceeding. In essence, the Commission established broad, binding principles intended to promote truth-in-billing.[3] The primary purpose

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1 Arch is a leading provider of paging services with over 4.2 million pagers currently in service. Arch operates in more than 40 states, and in 80 of the 100 largest markets in the United States.

2 *In the Matter of Truth-in-Billing and Billing Format,* CC Docket No. 98-170, *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 99-72 (rel. May 11, 1999) ("*Further Notice*").

3 In providing legal justification for its action, the Commission relied on Section 258 of the Communications Act, which prohibits the practice of "slamming" by interexchange carriers and upon Section 201(b) of the Act, concluding that a carrier's provision of "misleading or deceptive billing information is an unjust and unreasonable practice" in

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of the new guidelines is to combat slamming and cramming abuses.[4] Specifically, the guidelines are intended to "reduce slamming and other telecommunications fraud by setting standards for bills for telecommunications service;" "aid customers in understanding their telecommunications bills;" and "provide [consumers] with the tools they need to make informed choices in the market for telecommunications service."[5]

While the new guidelines expressly "apply to all telecommunications common carriers . . . ," the Commission acknowledged that there is no evidence of a "high volume of customer complaints in the CMRS context" or "that CMRS billing practices fail to provide consumers with the clear and non-misleading information they need to make informed choices."[6] To that end, the Commission determined to exempt CMRS carriers from some of the guidelines.[7]

In addition, the *Further Notice* solicits comment on whether the billing guidelines should apply to CMRS carriers in the first place.[8] Specifically, the Commission requests comment on the: (1) applicability of a Section 10 forbearance analysis, addressing the specific statutory elements of forbearance; (2) extent to which the presence of a competitive market is relevant to consumers' ability to protect themselves from the harms addressed in the *Report and Order*; (3) extent to which the phenomenon of customers substituting wireless for wireline service affects

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3 (...continued)
violation of Title II. *Report and Order* ¶¶ 21-24.

4 *See id.* ¶¶ 20-25.

5 App. A, to be codified at 47 C.F.R. § 64.2000(a).

6 *Id.* ¶ 16.

7 CMRS carriers are exempt from the requirements that carriers: identify new service providers on the bill (Section 64.2001(a)(2)); provide descriptions of billed charges (Section 64.2001(b)); and spell out deniable and non-deniable charges (Section 64.2001(c)).

8 *Further Notice* ¶¶ 68-70.

the application of these rules to wireless providers; and (4) benefits to consumers versus the burdens on carriers of imposing certain of the guidelines on CMRS carriers.

II. REGULATION OF CMRS BILLING PRACTICES IS INAPPROPRIATE IN THE DEREGULATED AND INTENSELY COMPETITIVE MARKET FOR WIRELESS SERVICES

Arch does not dispute the fundamental principal that consumers must have adequate information about the services they are receiving, and the alternatives available to them, if they are to reap the benefits of a competitive market.[9] Regulating CMRS carriers' billing practices, however, is not necessary to achieve this goal. As the Commission has acknowledged, the CMRS industry in general is *already* highly competitive.[10]

Indeed, paging is perhaps the *most* competitive segment of the telecommunication industry. As the Commission recognizes, despite some increased consolidation (based upon subscriber share), "there are still an average of 29 paging licensees in each of the 25 largest cities in the U.S., not including resellers, and an average of 12 paging licensees in each of the 25 smallest MSAs."[11] Paging carriers also face competition from other sectors of the wireless industry.[12] Moreover, paging customers routinely switch carriers on the basis of price and service quality.[13] Estimated churn rates are on the rise from 3 percent in 1997 to 4.0 percent.[14]

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9 *Further Notice* ¶ 7.

10 *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Fourth Report*, FCC 99-136 at 4-5 (rel. June 24, 1998).

11 *Id.* at 46.

12 *Id.*

13 *Id.*

14 *Id.* Churn rates, such as those present in the paging industry, do not point to a problem requiring regulatory intervention; rather they are strong evidence of the existence of a

(continued...)

In this highly competitive market, good billing practices are critical to a paging provider's ability to retain customers. As the Commission notes, one-way paging services have become reasonably homogenous, with competition generally centered on price.[15] In this kind of environment, sudden changes to bills (*e.g.*, additional or unclear charges) engender an immediate and negative consumer reaction resulting in customers changing carriers. In other words, paging carriers simply have no incentive or ability to engage in irresponsible billing practices.

In sum, the relevant CMRS markets are and continue to become competitive. Chairman Kennard has described CMRS as "the exemplar of fierce competition."[16] This competition serves as the foundation of a consumer's ability to avoid the harmful practices of "slamming" and "cramming," which are the subject of this proceeding. Consequently, Arch submits that Commission regulation of CMRS billing practices is unnecessary and should be avoided. Further, Arch believes that the competitive conditions of the CMRS market compel the Commission to forbear from regulating CMRS billing practices pursuant to Section 10 of the Communications Act.[17]

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14 (...continued)
competitive market.

15 *Id.* at 36-37.

16 Press Statement of Chairman William E. Kennard In Re Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (March 24, 1998).

17 Section 10(a) of the Communications Act *requires* the Commission to forbear from applying any regulation or provision of the Act to a class of telecommunications carriers in any of their geographic markets if: "(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3)
(continued...)

A. Strict Regulation is Not Necessary to Ensure Just, Reasonable, Non-discriminatory CMRS Billing Practices

Arch submits that market forces are sufficient to ensure just, reasonable and nondiscriminatory billing practices because competition removes the opportunity and incentive for any carrier to adopt anticompetitive and prejudicial terms or conditions of service. Consumers can easily replace any CMRS provider that engages in fraudulent or misleading billing practices. The high churn rate in the CMRS industry indicates that consumers do in fact change CMRS carriers in order to obtain lower prices or more favorable terms. Thus, any CMRS provider's billing practices which are in any way unjust, unreasonable or misleading merely will cause its customers to switch carriers.

That market forces are adequate to ensure just, reasonable and nondiscriminatory CMRS billing practices is further shown by the lack of any demonstrable harm to consumers from CMRS billing practices. Again, the primary purpose of the new guidelines is to combat slamming and cramming abuses.[18] The Commission, however, has acknowledged, there is no evidence of a "high volume of customer complaints" regarding slamming[19] or cramming abuses in the CMRS context or "that CMRS billing practices fail to provide consumers with the clear and non-misleading information they need to make informed choices."[20]

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17 (...continued)
forbearance from applying such provision or regulation is consistent with the public interest." 47 U.S.C. § 160(a)(1)-(3).

18 *See id.* ¶¶ 20-25.

19 Slamming is virtually impossible in the paging context because customers must change or re-tune pagers before obtaining service from a new carrier.

20 *Id.* ¶ 16.

Moreover, Arch notes that forbearance is not an irrevocable policy choice — the Commission is free to enforce billing regulations against CMRS carriers in the future if it becomes clear that market forces are no longer sufficient to protect CMRS consumers from billing abuses. Given the absence of any demonstrable abuses from CMRS billing practices, however, Arch submits that regulation of CMRS billing practices is not necessary to ensure reasonable CMRS billing practices.

B. Billing Regulation is Not Necessary to Protect Paging Consumers

As discussed above, the paging industry is fiercely competitive. In the current marketplace, no paging, or other CMRS provider, has market power and it is virtually impossible for a provider to survive if it is not attentive to the needs of consumers. Any paging provider that fails to treat its customers fairly will drive these customers to a competing paging network. Thus, enforcement of billing regulations against CMRS carriers is not needed to protect consumers.

C. Forbearance Is Consistent With The Public Interest

Regulating CMRS billing practices is not only unnecessary from consumers' perspective, but also contravenes the public interest served by the Commission's traditional deregulatory approach to wireless services.[21] As discussed, the CMRS industry is highly competitive and there is absolutely no evidence of "slamming," "cramming," or other billing abuses on the part of CMRS providers. Consequently, there is no factual basis to support imposing billing requirements upon CMRS carriers. Indeed, to do so would be nothing more than regulation for

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21 *See Implementation of Sections 3(n) and 332 of the Communications Act, Second Report and Order*, 9 FCC Rcd. 1411, 1418 (1994); *Implementation of Sections 3(n) and 332 of the Communications Act, Third Report and Order*, 9 FCC Rcd. 7988, 8004 (1994).

regulation's sake, and would clearly be contrary to the public interest.[22] Arch, therefore, urges the Commission not to impose billing regulation upon CMRS carriers in the absence of any evidence of a need for such regulation.

Arch submits that the public interest would not be served for the Commission to now reverse this trend toward deregulation of billing practices in competitive markets. Indeed, Arch believes that Section 10 of the Communications Act mandates that such deregulation not be cast aside so casually. The competitiveness and current practices of the wireless industry, and customers' willingness to switch carriers, demonstrate that these conditions are met for CMRS providers and that no exercise of Title I or Title II authority to regulate CMRS providers' billing practices is appropriate.

III. CONCLUSION

Given that market forces are adequate to address deceptive billing practices, and there is no evidence that either is insufficient, imposing new billing rules on wireless carriers is wholly unwarranted. Simply put, the guidelines adopted by the Commission simply do not make sense in the context of wireless services. Therefore, Arch urges the Commission to return to the

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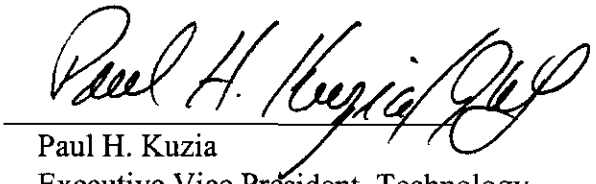
[22] More than a decade ago, the Commission repealed longstanding rules which had regulated the billing practices of broadcast stations. *Elimination of Unnecessary Broadcast Regulation*, 59 RR 2d 1500 (1986). The Commission concluded that these rules were unnecessary because competitive market forces would discourage broadcast licensees from engaging in fraudulent billing. The Commission also conceded it had little expertise in regulating billing practices, and that its limited resources should be deployed where it did have expertise. It rejected contentions that it had a public interest responsibility to regulate billing, citing approvingly a court ruling that "the public interest touchstone of the Communications Act, beyond question, permits the FCC to allow the marketplace to substitute for direct regulation in appropriate circumstances." *Id.*, citing, *Wold Communications, Inc. v. FCC*, 735 F.2d 1465 (D.C. Cir. 1984). These considerations are equally present here.

paradigm for CMRS regulation that relies on competition to ensure that consumers obtain the services they want, and which intervenes in the market only where regulation is needed to remedy a clearly defined wrong. No such intervention is required here.

Respectfully submitted,

ARCH COMMUNICATIONS GROUP, INC.

By: 

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